

Conagra, Inc. and/or Conagra Grain Processing Companies, Inc., and Molinos De Puerto Rico, Inc. and Congreso De Uniones Industriales De Puerto Rico. Cases 24-CA-6856 and 24-CA-6881

April 29, 1999

**SUPPLEMENTAL DECISION AND ORDER ON
REMAND**

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND
HURTGEN

On August 20, 1996, the National Labor Relations Board issued its Decision and Order in this proceeding.¹ The Board affirmed the administrative law judge's decision and found, inter alia, that Respondents violated Section 8(a)(5) and (1) of the National Labor Relations Act by failing to provide to the Union during contract negotiations requested financial information which the Board determined to be necessary and relevant because the Respondents were effectively claiming a present inability to pay what the Union proposed. The Board also affirmed the administrative law judge's further finding that the Respondents violated Section 8(a)(5) and (1) by conditioning the release of the requested information on the Union's withdrawing its charge alleging the unlawful withholding of such information.

The Respondents thereafter filed a petition for review of the Board's Order with the United States Court of Appeals for the District of Columbia Circuit and the Board filed a cross-application for enforcement. On July 8, 1997, the court issued its opinion denying enforcement of the Board's Order and remanding the case to the Board for further proceedings consistent with the court's opinion.² In this regard, the court, inter alia, denied enforcement of the Board's order that was based on the Board's finding that the requested information was necessary and relevant to the Union's duty as bargaining representative and, thus, that the Respondents were obligated under law to provide it.³ In light of its rejection of the Board's finding that the Respondents were required by the Act to turn over this financial information, the court also declined to grant enforcement of the Board's order that was based on the Board's finding that the Respondents unlawfully sought to condition the providing

of the information to the Union on the Union's withdrawal of its unfair labor practice charge regarding the Respondents' failure to provide the information. The court remanded the matter to the Board to consider whether its finding that the Respondents illegally conditioned the provision of information on the withdrawal of the related unfair labor practice charge may stand despite the court's rejection of the Board's finding that the Union was entitled by the Act to receive the requested information. *Conagra, Inc. v. NLRB*, 117 F.3d at 1446-1447.

On September 25, 1997, the Board advised the parties that it had accepted the remand and invited the parties to submit statements of position with respect to the issues raised by the remand. Thereafter the General Counsel filed a statement of position, and the Respondents filed a statement and a supplemental statement of position.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reconsidered this case in light of the court's opinion, which is the law of the case, and has decided to dismiss the allegation that the Respondents violated the Act by conditioning the provision of the requested information on the withdrawal of the Union's unfair labor practice charge.

The conditional offer was made and discussed during a single bargaining session. The Respondents took the position that, although they were not required to provide the requested information to the Union, they would do so if the Union agreed to withdraw its charge alleging that the Respondents had not provided information required to be provided under the Act. As noted above, the court determined that the Union was not entitled to this information under law. Thus, the Respondents ultimately prevailed in their view concerning their obligation to provide the information. Because the Respondents were not obligated to provide the information, we find that the Respondents' setting conditions on the provision of the information was not a refusal to bargain in good faith with the Union. In this regard, we find that the Respondents' conduct was akin to an offer of settlement of an unfair labor practice charge. It is well-established that such offers do not violate the Act. See *Carlsen Porsche Audi, Inc.*, 266 NLRB 141, 150 (1983), *Nabisco Inc.*, 267 NLRB 1236, 1241 (1983), and *Hilton's Environmental, Inc.*, 320 NLRB 437, 455 (1995); see also *United Aircraft Corp.*, 192 NLRB 382, 384 (1971), *enfd.* in pertinent part 534 F.2d 422, 464 (2d Cir. 1975).

ORDER

The complaint allegation is dismissed.

¹ 321 NLRB 944.

² 117 F.3d 1435.

³ The court also denied enforcement of the Board's order that was based on the Board's findings that the Respondents violated Sec. 8(a)(5) and (1) by engaging in surface bargaining, and Secs. 8(a)(1), (3), and (5) by locking out employees represented by the Union and otherwise unilaterally altering the terms and conditions of employment.